UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Fremont, CA)

U-HAUL OF CALIFORNIA
Employer

and Case 32-RC-5268

MACHINISTS DISTRICT LODGE 190, AUTOMOTIVE MACHINISTS LOCAL LODGE 1546, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
Petitioner

DECISION AND DIRECTION OF ELECTION

U-Haul of California, herein called the Employer, is in the business of renting trucks and trailers to the general public. Machinists District Lodge 190, Automotive Machinists Local lodge 1546, International Association of Machinists And Aerospace Workers, herein called the Petitioner or the Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time maintenance employees, including detailers or wash bay technicians, parts employees, and transfer drivers, employed by the Employer and performing work at the Employer's Fremont facility; excluding all managerial and administrative employees, office clerical employees, and all other employees, guards, and supervisors as defined by the Act. A hearing officer of the Board held a hearing, and the Employer filed a brief with me.[1]

[1] Both parties were afforded the opportunity to file briefs. Petitioner did not do so but tendered oral argument at the hearing. I have duly considered the Employer's brief and Petitioner's oral argument.

As evidenced in the hearing and in the Employer's brief, the parties disagree on whether the unit should include employees currently provided to it by temporary employment agencies. The Employer argues that it and the temporary employment agencies do not constitute joint employers of the employees supplied to the Employer (user employer) by any of the temporary employment agencies (supplier employer), and indeed that the Employer is not an employer of the temporary employees (supplied employees) at all. The Employer does not dispute that a community of interest exists among its permanent, non-supplied employees in its maintenance department. However, the Employer argues that there is a not a sufficient community of interest among its permanent non-supplied employees and its temporary supplied employees to establish that those employees would constitute an appropriate unit. Petitioner argues that it need not establish that the Employer and the temporary employment agencies are joint employers and argues that the evidence establishes that there is a sufficient community of interest among the petitioned-for employees to establish that they constitute an appropriate unit.[2] The Parties also

[2] With its Post-Hearing Brief, the Employer simultaneously filed a Motion to Reopen the Record pursuant to Section 102.65(e)(1) of the Board's Rules and Regulations. In support of the motion, the Employer attached a letter dated July 2, 2004 from Northwest Staffing Resources/Resource Staffing Group Controller Mary P. Sauer to U-Haul corporate office representative Bob Aleo, which purports to terminate the service/staffing agreement between Resource Staffing Group and U-Haul at the Fremont, California location at issue in this case effective 30 days from the July 2, 2004 date of the letter. Petitioner also submitted a copy of that letter to the Region after the close of the hearing and requested that it be made a part of the record. It appears that both parties received the letter after the close of the hearing, and therefore, it was not introduced into evidence during the hearing. As both parties have urged that the Region consider the letter and its implications in this case, I will treat the letter as a late filed exhibit.

I am, however, denying the Employer's motion to re-open the record. In this regard, I note that the termination of the temporary employment agency contract with the Employer does not occur until August 2, 2004. Because of the prospective nature of the contract termination, any evidence provided prior to the August 2 date would be speculative at best. Moreover, whatever arrangements the Employer makes as of August 2, could well be subject to additional short term changes. I note, for example, that the Resource Staffing Group's contractual relationship with the Employer began in May 2004 and is subject to end in August 2004. The prior temporary employment agency had a contractual relationship with the Employer from November 2003 through May 2004. In these circumstances, I have determined that it is not clear when, if ever, the Employer will have arrived at a stable long-term solution to its employment needs that recently have been addressed by the use of different temporary employment agencies. In light of these circumstances, the delay inherent in re-opening the record is not warranted. I also note, that in light of my decision in this case, it does not appear that further evidence is needed. The unit found appropriate in this case will include the Employer's own solely employed employees, and all full time and regular part time employees supplied to the Employer by a temporary employment agency; that is, those supplied employees over whom the

disagree on the supervisory status of shop supervisor or scheduler Martin Rangel. The Petitioner alleges that he is a supervisor, and the Employer argues that Rangel is not a supervisor.

As discussed below, I have concluded that the petitioned for unit, which is composed of the Employer's solely employed employees and all full time and its regular part time employees who are supplied to the Employer by a temporary employment agency, constitutes an appropriate unit. I have also found that there is insufficient evidence to establish that Rangel is a supervisor within the meaning of the Act. To provide a context for my discussion of the above-described issues, I will first provide an overview of the Employer's operations. Then I will present in detail the facts of this case and the reasoning that supports each of my conclusions on the issues.

OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer rents trucks and trailers to the general public. Its facility at issue in this case, which is located in Fremont, California, is a rental, maintenance and repair facility. Ricardo "Rick" Briceno is the Shop Manager at the site. Briceno reports to David Gomez.[3] The Employer employs in excess of approximately 35 employees at its Fremont facility, which is comprised of two buildings, Building B and Building C. The work performed in Building B includes the steam cleaning or pressure washing of truck engines, preventative maintenance including oil, fluid and belt changes, brake work, minor maintenance, and final inspection and safety certification. The work performed in Building C includes more specialized work, pre-inspection, engine repair, air conditioning and heating repair, transmission repair, minor maintenance, trailer repair, van body repair, painting, as well as the scheduling and dispatching of transfer drivers.

Employer has sufficient control to constitute an employer of the supplied employees. Thus, whether the Employer chooses not to fill the positions now filled by temporary employees, or whether it continues to use employees from its current, former or new temporary employment agencies, or whether it assigns the work in question to its solely employed employees, the unit description in this case will permit the holding of a fair election.

[3] The exact title of David Gomez is absent from the record.

The Employer employs about 39 to 40 of its own employees and also uses approximately 23 to 28 "temporary" employees who are supplied to it by at least 2 different employment agencies, Resource Staffing Group ("RSG") and Job1 USA.[4] There is no on site supervisor from RSG present at the facility.[5] All day-to-day supervision of the regular employees and the supplied employees is from the Employer.[6]

The contract between the Employer and RSG permits the Employer to hire RSG employees as regular U-Haul employees after 80 working days. The Employer may utilize the services of other temporary employment agencies or may hire employees directly. Though RSG furnishes employees for the Employer to consider using, the Employer has complete control over which RSG employees actually work at the Employer's facility.

In May 2004, RSG made a sales presentation to Employer representatives Gomez and Briceno in which it represented that it could provide the same or superior types of temporary employment services that the Employer was then receiving from Jobs 1 USA at a lesser cost to the Employer. At that time, virtually all of the employees that RSG presently supplies to the Employer at the facility were already present at the facility on the payroll of Jobs 1 USA. Upon the Employer's agreement to largely substitute RSG for Jobs 1 USA, RSG had the employees then on the payroll of Jobs 1 USA execute all necessary paperwork to become employees of RSG. RSG assured the Employer that all of these employees would remain present and available to work, and at the same wages they were already making. That in fact subsequently occurred.

[4] This entity is referred to in the record as Job1 USA and Job One USA.

[5] There is no evidence in the record that any other suppliers or temporary agencies have any supervisors on site at the Fremont facility. In the period before May 12, 2004, when the supplied employees were provided by Job 1 USA rather than RSG, Job 1 USA had no supervisor at the facility.

[6] Employee Juan Marin testified that he has not seen any representative of RSG at the site since the May 12, 2004 date on which the Job 1 USA employees transferred over to RSG.

There is no evidence in the record that the prospect of employees not switching over from Jobs 1 USA to RSG was discussed or considered.

THE POSITION OF THE PARTIES

It is the position of the Employer that RSG is the sole employer of the employees it supplies; that RSG and the Employer are not joint employers of the RSG supplied employees; and that the Union has not demonstrated a community of interest between the supplied employees and the Employer's solely employed employees. The Employer argues that in these circumstances, the unit sought by the Petitioner is not an appropriate unit. See M.B. Sturgis, 331 NLRB No. 173 (2000). The Union takes the position that it need not establish that RSG and the Employer are joint employers, because it has only named the Employer in the petition. The Union also argues that the Employer has sufficient control of the supplied employees to constitute an employer of the employees and that the supplied employees and the Employer's solely employed employees share a sufficient community of interest to constitute an appropriate unit. As set forth in greater detail below, I conclude that I need not decide whether the Employer and the temporary agencies are joint employers, and I find that the Employer is an employer of the employees supplied to it by the supplier employers. I also find that the Employer's solely employed employees and the employees supplied to it by its temporary employment agencies share a sufficient community of interest to constitute an appropriate unit.

ANALYSIS

In situations where an employer employs its own employees and uses employees provided by a temporary employee agency, a union may file an RC petition with the Board seeking an election covering both the employees of the employer and the employees of the

supplier employer who are employed at the employer's facility. M.B. Sturgis, Inc., 331 NLRB No. 173 (2000). If, in its RC petition, the union names both the supplier and the user employers as the employers of the employees in the petitioned for unit, both employers would have an obligation to bargain with the union if it won the Board election. In such circumstances, the Board will not order an election unless it finds that the employer and the temporary employee agency are joint employers and that the employees in the petitioned for unit share a sufficient community of interest to constitute an appropriate unit. Here, however, the Union only seeks a finding that U-Haul is the employer of its own employees and an employer of the employees provided to U-Haul by the temporary employment agencies that provide it with employees. The Union is not seeking a finding of the employer status of the supplier employers supplying U-Haul with employees (whether RSG or otherwise) and is not seeking to impose a bargaining obligation on those entities.[7] In these circumstances, the Board has held that it is not necessary to determine whether the Employer and the temporary employee agencies are joint employers; rather, it is only necessary to determine whether the Employer is a statutory employer of its own employees and the of the temporary employment agency employees who perform work at the Employer's facility. Outokumpu Copper Franklin, Inc., 334 NLRB No. 39 (2001); Interstate Warehousing of Ohio, LLC, 333 NLRB No. 83 (2001); and Professional Facilities Management, Inc., 332 NLRB No. 40 (2000).

THE EMPLOYER IS AN EMPLOYER OF THE EMPLOYEES SUPPLIED TO IT BY THE TEMPORARY EMPLOYMENT AGENCIES

In this case the evidence establishes that the Employer is an employer of the employees supplied to it by the temporary employment agencies. In the post-Sturgis cases evaluating

[7] In its brief, the Employer proffers various alleged justifications for the Union's decision to amend its petition to delete RSG as a named employer. Regardless of whether or not these speculative assertions of motive are accurate, I do not find them necessary to my decision, and do not rely upon them.

whether a "user" employer is an employer of temporary employees provided by a supplier employer, the Board considers whether the "user" employer has any meaningful control over some of the terms and conditions of employment of the supplied employees. See Interstate Warehousing of Ohio, LLC, 333 NLRB No. 83, slip op. at 6 (2001) (user employer found to be statutory employer where it supervised, directed, and disciplined temporary employees and converted many temporary employees to permanent employment). While the Board relied upon these factors in Interstate Warehousing, it does not appear that any single factor is essential to a finding of statutory employer status. The expectation of conversion to permanent employment in Interstate Warehousing, for example, was absent in Professional Facilities Management, in which the user employer had no permanent solely employed employees. Professional Facilities Management, Inc., 332 NLRB No. 40 (2000). When the user employer has meaningful control over terms and conditions of employment of the supplied employees, then meaningful bargaining can take place. Professional Facilities Management, slip op. at 2.

Here the evidence amply supports the conclusion that the Employer is a statutory employer of the supplied employees. With respect to disciplining and terminating the employment of supplied employees, it is undisputed that the Employer has the power to send supplied employees home for unsatisfactory work or other misconduct, and to direct its temporary employment agencies to not send such employees back to the Employer's facility. It is also clear that the Employer requires the supplied employees and its own employees to meet the Employer's quality control and safety standards.[8] There is no evidence in the record that RSG or any other supplier has ever failed or refused to abide by a request from the Employer that a particular employee not be supplied in the future.

[8] While Briceno testified in a conclusionary manner that the Employer's rules do not govern the RSG employees, his subsequent testimony that he would permit neither U-Haul nor RSG employees to smoke or solicit at the facility indicates that the U-Haul rules are, as a practical matter, enforced against RSG employees by U-Haul supervisors.

I also find that the Employer provides supervision and direction to the supplied employees. Importantly, RSG has none of its own supervisors at the facility. There is no evidence in the record that RSG Branch Manager/Account Executive Rodney Crowell, or anyone at RSG, or any other supplier employer, ever disciplined or discharged any employee without having been instructed to do so by the Employer. Nor is there evidence that Crowell or any other RSG representative assigns, directs or reviews the quality of work of any RSG employees, or that they have ever been at the facility in any evaluative capacity.[9] [10]

The Employer sets the work schedules for all employees, whether permanent or supplied, and the record shows that the permanent and supplied employees work the same schedule. The Employer also determines the rest breaks and lunch periods of all employees, including the supplied employees. The Employer determines the need for employee overtime, and can request that supplied employees work overtime without obtaining permission from the supplier employer. I also note that the Employer maintains the right to reject and send home supplied employees who are deemed to be unsatisfactory, and therefore it inherently maintains an effective control over the qualifications that supplied employees must have, and thereby has a significant impact on the hiring standards set by the supplier employers.[11] Similarly, the Employer inherently has an indirect, but significant, impact on the wages/benefits that the supplied employees will receive. Although it is the supplier employers who set the wages and

---

[9] The evidence reflects that the Employer's post-inspection specialists or final inspectors review the quality of the repair, cleaning and maintenance of the vehicles as processed by all employees, without regard to whether the vehicles were worked on by regular or supplied employees. The fact that the RSG's presentation package to the Employer indicated that this was a service that RSG could provide does not amount to evidence that such a service has in fact been provided or that the Employer ever deemed it necessary.

[11] The record includes copies of RSG's standardized forms and documents, which it purportedly utilizes for the purpose of gathering the information necessary to conduct employment verification and reference checks of the employees it will be furnishing to employers such as U-Haul. However, the evidence of the hiring process in the instant matter, in which RSG apparently visited the facility and simply had the Job1 USA employees already working at the Employer's facility fill out paperwork affiliating themselves with RSG, suggests that the Employer was not heavily dependent on RSG doing a screening of the employees.

benefits of the supplied employees, the Employer pays the suppliers the cost of supplied employee wages plus a premium.[12]

Based on the above stated factors, I find that the Employer has meaningful control over several of the essential terms and conditions of employment of the supplied employees, and that the Employer is therefore an employer of the supplied employees within the meaning of the Act.

THE EMPLOYER'S SOLELY EMPLOYED EMPLOYEES AND THE EMPLOYEES SUPPLIED TO THE EMPLOYER BY THE TEMPORARY EMPLOYMENT AGENCIES SHARE A SUFFICIENT COMMUNITY OF INTEREST TO CONSTITUTE AN APPROPRIATE UNIT

The Employer does not dispute that a community of interest exists among its solely employed employees in its maintenance department. Thus, the only remaining issue is whether the agency-supplied employees share a community of interest with the Employer's solely employed employees in the petitioned-for unit such that they constitute an appropriate unit.[13]

In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. See Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950); National Cash Register Co., 166 NLRB 173, 174 (1966); Dezcon, Inc., 295 NLRB 109, 111 (1989) (the Board need only select an appropriate unit, not the most appropriate unit). Also, a plant-wide single location unit, such as that requested by

[12] The Employer pays RSG a 32% surcharge on what RSG pays its employees as an hourly wage. For example, if an RSG-supplied employee receives $10/hour from RSG, the Employer will pay RSG $13.20/hour for that employee. This 32% surcharge is intended to cover RSG's overhead or other expenditures, including workers compensation costs.

[13] Of course, the Employer would only be in required to bargain about those terms and conditions of employment of the supplied employees that it controls. To the extent this may potentially pose practical difficulties, the Board does not consider such speculative or potential bargaining difficulties that may arise from such a situation. Interstate Warehousing of Ohio, 333 NLRB No. 83, slip op. at 1 (2001). Thus, the Petitioner's failure to include RSG or any other supplier employer as an employer or joint employer on the petition does not invalidate the petition. Professional Facilities Management, Inc., supra, slip op. at 2 (2000); Interstate Warehousing of Ohio, supra, slip op. at 2.

Petitioner herein, is presumptively appropriate. Hegins Corp., 255 NLRB 160 (1981); Penn Color, Inc., 249 NLRB 1117, 1119 (1980).

The "an appropriate unit" issue in this case is whether the employees supplied by various temporary employment agencies to the Employer may be included in a unit with the Employer's solely employed employees. This analysis is governed by M.B. Sturgis, supra, and its progeny, which require traditional community of interest factors to be applied.

> In applying a community of interest test, the Board analyzes bargaining history, functional integration, employee interchange, employee skills, work performed, common supervision and similarity in wages, hours, benefits and other terms and conditions of employment. See J.C. Penney Co., 328 NLRB No. 105 (1999); and Armco, Inc., 271 NLRB 350, 351 (1984).

No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., 273 NLRB 348 (1984).

In Interstate Warehousing of Ohio, 333 NLRB 682 (2001), the Board specifically considered the fact that the user employer ultimately hired its regular employees from the ranks of the temporary employees. This factor; however, is not dispositive, as shown in MJM Studios of New York, Inc., 336 NLRB 1255 (2001). In that case it was determined that the supplier employer's employees and the user employer's own employees constituted an appropriate unit, even though the evidence did not establish that the user employer routinely secured its regular employees from the ranks of the supplier employer's employees.

As noted in the previous section, the evidence here demonstrates that the Employer's solely employed employees and the supplier employees share common day to day supervision. [14], It also appears that the on-the-job training given to the supplied employees is primarily provided

[14] Even if I were to conclude that there is not common supervision as to all aspects of the regular and supplied employees' employment, the Employer's argument would not prevail in this case. See Texas Empire Pipe Line Co., 88 NLRB 631 n.2 (1950) (difference in supervision not per se basis for excluding employees from appropriate unit). Accord: Hotel Services Group, Inc., 328 NLRB No. 30 (1999).

by co-workers or the Employer's supervisors, not by RSG. In addition, the record shows that the supplied employees work in the same building as the solely employed employees, and some work in a maintenance bay that is next to the maintenance bay in which the Employer's solely employed employees perform their work. The Employer's supplied employees and the Employer' solely employed employees are held to the same work quality and safety standards, punch the same time clock, work the same shifts, and are paid an hourly wage. The Employer's regular employees receive anywhere from $6-18 per hour, and the Employer's supplied employees receive anywhere from $6-13.95 per hour. Many of the supplied employees and the Employer's solely employed employees perform the same work functions and share the same work classifications. As noted in Sturgis itself, "[u]nder Section 9(b) of our statute, a group of an employer's employees working side by side at the same facility, under the same supervision, and under common working conditions, is likely to share a sufficient community of interest to constitute *an* appropriate unit." Sturgis, supra, slip op. at 9 (2000). I find that description to be applicable in the present circumstances.

I also note that the record does not reflect any prohibition upon the right of both the "permanent" employees and the "temporaries" supplied by supplier employers to move about all areas of the Employer's facility as necessary in order to perform their work, despite their usual assignment to particular maintenance bays. Both regular and supplied employees utilize the same lunch or break room. Regular and supplied employees work in both of the two buildings at the Employer's premises. With the exception of approximately two employees who wear no specialized uniform, the regular and supplied employees wear identical uniforms, as provided by a third party uniform company. Both regular and supplied employees are required to provide their own tools if they work in particular job classifications. There is no indication in the record

that there is any material difference in the types of tools used by regular and supplied employees. With regard to the tools not supplied by employees, there is no evidence that RSG, rather than the Employer, has ever provided tools to permanent or supplied employees. Further community of interest evidence was supplied by the Employer's witness, Briceno, who testified that temporary employees work side-by-side with regular employees and are integrated into all aspects of the workforce. Certain job classifications are given to both regular and supplied employees, including transfer driver, preventative maintenance technicians, brake/tire specialists, van body technicians, and trailer body repair technicians. As in Gustave Fischer, Inc., 256 NLRB 1069, 1073 (1981), the record in this case reflects an integrated operation "where the emphasis appears to be placed upon completing the task at hand, rather than upon the particular classification of employee involved," characterized by flexibility, "underscored by the use of employees as needed."

The Employer in its brief, notes that there are certain aspects in which the Employer's regular and supplied employees have dissimilar terms and conditions of employment. For example, the supplied employees are ineligible for certain Employer benefits, receive their paychecks from the supplier agencies, may be subject to the disciplinary or personnel rules of the supplier agencies to which permanent employees are not subject, perform work less complex than that performed by the most skilled of the Employer's regular employees, and are paid pursuant to the supplier employer's wage system. However, these dissimilar terms and conditions of employment are substantially outweighed by the many common terms and conditions of employment the supplied employees share with the Employer's solely employed employees.

Based on the foregoing, I have concluded that the regular and supplied employees' similarity of hours, job functions, frequency of contact, shared supervision and integration of work function all support a finding that the Employer's permanent and supplied employees share a community of interest and constitute an appropriate unit.

The Petitioner contends that the shop supervisor position, which is sometimes referenced in the record as scheduler, or scheduler/dispatcher, is a statutory supervisor within the meaning of Section 2(11) of the Act and must be excluded from the unit. The Employer contends the shop supervisor is not a supervisor under the Act and should be included in the unit.

Section 2(11) of the Act defines a supervisor as one who possesses "authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." The possession of any one of these primary indicia of supervisory authority, as specified in Section 2(11) of the Act, regardless of the frequency of their use, is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner that is more than routine or clerical. Harborside Healthcare, Inc., 330 NLRB 1334 (2000); Hydro Conduit Corp., 254 NLRB 433, 437 (1981); Queen Mary, 317 NLRB 1303 (1995).

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. NLRB v. Kentucky River Community Care, 532 U.S. 706, 121 S.Ct. 1861 (2001); Bennett Industries, Inc., 313 NLRB 1363 (1994); Tucson

Gas and Electric Co., 241 NLRB 181 (1979). To meet this burden the party asserting supervisory status must provide sufficient detailed evidence of the circumstances surrounding the alleged supervisor's decision making process in order to demonstrate that the alleged supervisor was exercising the degree of discretion or independent judgment that is necessary to establish supervisory status. Moreover, it is well settled that the designation of an individual as a supervisor by title in a job description or other documents is insufficient in and of itself to confer supervisory status. Western Union Telegraph Company, 242 NLRB 825 (1979).

There is no evidence in the record that shop supervisor or scheduler Martin Rangel possesses any authority to hire, transfer, suspend, lay off, recall, promote, discharge, discipline, or adjust the grievances of, employees. The evidence that Rangel assigns or responsibly directs work is limited to the following. As scheduler, Rangel acts as an intermediary between the pre-inspection employees and the parts employees. Rangel directs the flow of equipment from the pre-inspectors to the maintenance bays upon learning from parts employees that necessary parts have been obtained. It is undisputed that it is foreman and stipulated supervisor Ricardo Camacho rather than Rangel who possesses ultimate authority to determine what work will be performed at the facility, as well as which repairs are sufficiently complex that they must be performed outside the facility.

The assignment of tasks in accordance with an employer's set practice, pattern or parameters, or based on routine or obvious factors, does not require a sufficient exercise of independent judgment to satisfy the statutory definition. Express Messenger Systems, 301 NLRB 651, 654 (1991); Bay Area-Los Angeles Express, 275 NLRB 1063, 1075 (1985). The Board and federal courts typically consider assignment based on assessment of a worker's skills

to require independent judgment and therefore to be supervisory, except where the "matching of skills to requirements [is] essentially routine." Brusco Tug & Barge Co. v. NLRB, 247 F.3d 273, 278 (D.C. Cir. 2001). In this case, it does not appear that Rangel exercises independent judgment when he gives a transmission specialist a transmission work assignment after learning that there is a vehicle needing transmission work, that a transmission is available, and that a transmission specialist is available to perform the work. I find that the handling of such routine situations generally does not require the exercise of judgment and discretion, and is akin to the assignment of routine tasks.

In determining whether direction is responsible, the focus is on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs. Children's Farm Home, 324 NLRB 61 (1997); KDFW-TV, Inc., 274 NLRB 1014 (1985). In this regard, I note that there is no evidence in the record that foreman Ricardo Camacho or any other U-Haul manager will contact Rangel or hold Rangel responsible in any manner in the event that any of Rangel's subordinates fail to accomplish any particular tasks. There is no evidence in the record of any documents executed by Rangel, or any evidence in the record that Rangel has ever received any disciplinary warnings on the basis of any alleged failure to direct and delegate work to subordinates.

On the basis of the foregoing, I have concluded that the present record does not support the contention that the Shop Supervisor or scheduler exercises independent judgment in the course of assigning or responsibly directing work, that supervisory status has not been established, and that the Shop Supervisor shall be included in the unit.

I therefore find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance employees, including detailers or wash bay technicians, transfer drivers, and parts employees employed by the Employer at the Employer's 44511 Grimmer Boulevard, Fremont, California repair facility, including all such employees supplied by temporary employment agencies; excluding all managerial and administrative employees, office clerical employees, all other employees, guards, and supervisors as defined by the Act.

CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I conclude that:

Upon the entire record in this proceeding, including the parties' arguments made at the hearing and the brief filed by the Employer, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a California corporation with a facility and principal office located in Fremont, California, where it is engaged in the maintenance, repair and rental of moving equipment to the public. During the past 12 months, the Employer had gross retail receipts in excess of $500,000, and purchased and received and/or sold goods or services valued in excess of $50,000 directly from businesses located outside the State of California. In such circumstances, I find the assertion of jurisdiction appropriate herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time maintenance employees, including detailers or wash bay technicians, transfer drivers, and parts employees employed by the Employer at the Employer's 44511 Grimmer Boulevard, Fremont, California repair facility, including all such employees supplied by temporary employment agencies; excluding all managerial and administrative employees, office clerical employees, all other employees, guards, and supervisors as defined by the Act.

There are in excess of approximately 60 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by MACHINISTS DISTRICT LODGE 190, AUTOMOTIVE MACHINISTS LOCAL LODGE 1546, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **July 22, 2004.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request

must be received by the Board in Washington by 5 p.m., EST on **July 29, 2004.** The request may **not** be filed by facsimile.

Dated: July 1, 2004

/s/ William A. Baudler
William A. Baudler, Acting Regional Director,
National Labor Relations Board
Region 32
1301 CLAY STREET, SUITE 300N
Oakland, CA 94612-5211

32-1229

177-8580-5500
401-2575-4200
440-1740-5000
440-1760-1920-0100
440-1760-1920-4000
440-1760-9167-0200
440-1760-9167-0233